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A NEW CONSTITUTIONALISM: DESIGNING POLITICAL INSTITUTIONS FOR A GOOD SOCIETY. By Stephen L. Elkin[1] and Karol Edward Soltan,[2] eds. Chicago: University of Chicago. 1992. 240 pages. Cloth, $45.00; paper, $15.95.

Charles R. Shipan[3]

Most political scientists would agree that the overriding goal of political science is to explain political events. More specifically, whether one is interested in studying the outbreak of war, voting behavior in legislatures, or the effect of elections on the economy, the aim is to explain as much of the variance in these events as possible. Political scientists educated in this tradition generally shy away from making normative arguments, as such work does not fall under the heading of "good social science."

The essays in *A New Constitutionalism* represent nothing less than an attempt to redirect the enterprise of political science toward a different goal. Many of the authors of these essays are members of the Committee on the Political Economy of the Good Society (PEGS), whose members share the conviction that social scientists should focus on "how political institutions work and can be made to work, how they may be assembled into the larger wholes of political regimes, and why some regimes are better than others." Their goal in this book is to advance the cause of a "practical political science," one which focuses on enhancing the ability of citizens and politicians to design institutions to achieve valued goals. The authors thus seek to sway those of us who believe the goal of social science is, and should be, to explain and understand the world of politics.

The book proceeds in three sections. In the opening section, the book's editors, Karol Edward Soltan and Stephen L. Elkin, attempt to spell out what is meant by a "New Constitutionalism." The second section consists of essays which focus on different varieties of constitutionalist theory. All of the authors in this section clearly accept the idea that a focus on a New Constitutionalism is needed, although each author differs in his conception of what the essential features of this approach ought to be. Finally, in the book's concluding section, three authors use the political

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regime of the United States to illustrate some of the concerns of the New Constitutionalism.

The first section, with its overview essays by Soltan and Elkin, provides a nice overview of the goals of the book and of PEGS. The primary purpose of these initial chapters is to set the table for the following essays—that is, to provide a bit of a road map for those of us who are unfamiliar with this research agenda. To do so, the authors first seek to explain what is meant by the New Constitutionalism. Along similar lines, they seek to detail the development of a concern for a New Constitutionalism—that is, to show its intellectual antecedents. Finally, they set out a list of questions that such an approach will need to address if it is to be successful.

Soltan's essay addresses the question: What is the New Constitutionalism? He begins by drawing the connection between the New Constitutionalism and other approaches, such as critical theory, reconstructive theory, political economy, and theories of law. He then moves on to draw distinctions between this and more traditional constitutionalism. First, he argues that the new approach, unlike the old, is interdisciplinary. Second, he notes that in contrast to much of contemporary social science, the New Constitutionalism aspires to prescribe as well as to describe and explain. Finally, Soltan identifies the following as the main themes of the New Constitutionalism: it points out the inadequacy of other narrower conceptions of institutional design which do not ask us to consider institutions as preference-formers but rather treat institutions as mere instruments of existing preferences; its goal of institutional design takes into account the basic limits of human nature, to avoid the application of inadequate or unrealistic prescription; and finally, it recognizes the inadequacy of various narrow conceptions of human motivation—for example, perspectives on institutional design that either neglect the possibility of self-interest or rely entirely on it.

The more important of the two introductory chapters is Elkin's. It is Elkin who most directly addresses the notion that we should be moving toward a "practical" political science, one which would have at its heart the design of institutions that form a desirable political regime. Elkin argues that this is not a new concern, but rather, by addressing matters other than explanation and evaluation, is a return to earlier modes of political science that focused on constitutions. He provides a very nice and clear overview of previous strands of constitutionalist thought, including the classical tradition (and its reformulations) and so-

cial choice theory. While the review he provides is not enough to give an unfamiliar reader a deep understanding, it is certainly enough to orient such a reader with some basic themes and ideas.

What is unique about this new approach to constitutionalism? The main difference, according to Elkin, is that traditional constitutional social science, while concerned with designing institutions and constitutions that create and improve regimes, concentrates almost exclusively on limiting the exercise of political power. The New Constitutionalism, on the other hand, must address several other important questions. To begin with, how can we use government for enhancing social welfare and at the same time reduce arbitrariness in the exercise of the power to do so (i.e., can government be both limited and purposive)? Furthermore, what sort of individual character should political institutions foster? (His answer is "the kind of character that is necessary for the proper functioning of a constitutional regime.") Elkin also asserts that the New Constitutionalism must recognize that one cannot look at each institution independently but needs to look at them interdependently. Finally, he contends that the most fundamental question is whether its very concern for political design and the creation of good political regimes can be defended. Are human beings even capable of such large scale designs? He allows that an individual at a given point in time is not, but that citizens over a long period of time are, and thus the problem can be approached iteratively.

While these two chapters successfully illustrate some outlines of a practical political science, there are a few problems that arise here. A minor point is that Soltan provides no evidence for his claim that the New Constitutionalism is more interdisciplinary than previous approaches. A more major point, and one that is common to later chapters, is that the authors understate the role that other scholars have assigned to institutions. Many scholars, including those ascribing to rational choice methods, have seen institutions not only as instruments of existing preferences but also as preference-formers and as interconnected parts of the government, parts that should not be studied in isolation. Recent work along these lines, including books and articles by Knott and Miller, McCubbins, Noll and Weingast, Moe, and others, is ignored by the chapters in this book. This is problematic, as these works often point out that choosing a "best" institution is often impossible because of political constraints and incentives.

The middle section of the book, as noted earlier, presents different varieties of constitutionalist theory. The four chapters in this section show the variety of opinions and approaches which can be listed under the tent of New Constitutionalism.

The least satisfying of these chapters is James Ceaser's. Ceaser argues that the sole reasons for acquiring knowledge in political science should be to determine whether or not a regime is good and how to make it better. Echoing some of the comments of earlier chapters, he asserts that this harkens back to the concerns of traditional political science. This chapter has some good descriptions of the science of politics and the historical development of schools of thought such as pluralism and rational choice, but in the end it fails to be convincing, in part because of its ad hominem attacks on such earlier approaches. While it does point out some legitimate failings of these approaches, it is so vague about the alternatives that it fails to persuade the reader that there is anything systematic or specific to be said about New Constitutionalism.

Also in this section, Soltan and Elkin each pick up on and expand some of the themes they introduced in the opening essays. Soltan, for example, delves further into the meanings and background of the study of constitutions and argues for a "generic constitutionalism," which "takes in new directions the basic idea of limiting power in the service of moral and political ideals not just within the state, but also in private organizations and bargaining." Elkin uses his chapter to discuss the flaws in contemporary constitutional thought—most centrally, that it "has an incomplete understanding of political institutions and sees them as essentially practical devices for limiting the arbitrary exercise of political power"—and to propose that constitutions must also help form the character of the citizenry and facilitate intelligent social problem solving.

Finally, Charles Anderson presents a detailed discussion of the differences between "pragmatic liberalism" and "classical liberalism." The latter suffers from several problems, he maintains, most serious of which is its insistence on the most strenuous ground rules for the justification of principles before undertaking collective action, an insistence which places an almost impossible burden of proof on the proponents of collective action. Anderson points out that we do not always know our principles in advance, and that we do not have perennial debates over constitutional principles. He argues that instead we should be guided by pragmatic liberalism, which developed out of criticisms

of classical liberalism. Pragmatic liberalism avoids the excessive individualism and atomistic logic of classical liberalism, and argues that there is indeed a role for public intervention in private institutions. Central to this idea is the "community of inquiry," whereby public ideals arise "from a sustained, open, critical, self-conscious consideration of the best way of achieving a social purpose." This extension of classical liberalism, which echoes the work of Alan Stone (e.g., *Public Service Liberalism*) and Cass Sunstein in its emphases on governmental intervention into the economy and the importance of deliberation, is worthwhile reading.

The final section contains three essays of widely varying natures. First, Theodore Lowi reiterates the theme which he has sounded time and again, a theme first outlined in Grant McConnell's *Private Power and American Democracy*—that the continual expansion of national government has been accompanied by a yielding of control over public policy to special interests. It is, as Lowi writes, a visit to the same well, which is now unfortunately deeper and more polluted than when he first began to write on this topic. Lowi takes this opportunity to address those, such as Richard Stewart and Ernest Gellhorn, who have criticized his earlier works. In an interesting addition to his earlier work, he points out that not only are liberals responsible for the current devolution of power to special interests, conservatives are as well.

The other two chapters in this section are by Cass Sunstein and Edward Haefele. A newer contribution from Sunstein, which directly addressed some of the themes sounded earlier in the book, would have been most welcome. Disappointingly, however, the book includes a version of his almost decade-old article, *Interest Groups in American Public Law*, in which he demonstrates the importance of both the awareness of factions and the need for deliberation seen in Madison's theory, and argues that much of current law is based on this "Madisonian republicanism." It is an excellent article, but many, if not most, of the readers of this book will already be familiar with it. Haefele's essay, on the other hand, comes from a completely different angle in its attempt to identify the central features of the American regime. Self-government, civic virtue, and state-economy relations are three of the features identified and defended as of central importance. The essay's most unusual feature is its discussion of a fourth feature—the importance of the secular-sacred distinction in the United States.

One potential objection to this book is its lack of cohesion. This, however, is not a serious problem. To begin with, these authors are essentially designing a new research program, and a range of opinions at this point is certainly to be expected. In addition, while these chapters show a fair amount of diversity, most of them do subscribe to the idea that we need to consider how to create institutions that lead to good regimes. Elkin and Soltan are to be credited for bringing together a collection of essays which manage, for the most part, to be both diverse and consistent.

Other flaws are more serious. A primary purpose of the book is to convince readers that the primary purpose of political science ought to be to choose among regimes. Thus, in order to be a success, the book must convince us this is the case. But two nagging issues prevent the book from being convincing on these grounds. First, creating more desirable institutions is certainly a laudable goal. But the unanswered question is this: more desirable to *whom*? The answer to this question, as social choice theory has demonstrated, is not at all straightforward; yet it is barely discussed in this volume. Second, even if one accepts the argument (made most explicitly by Ceaser) that the only good social science is one that is normative, another question remains unanswered: How can we prescribe when we still have difficulty describing? This, too, is a troubling question, and unfortunately it also goes unaddressed. These were questions I had as I began reading the book, and they were questions I still had after having read it.

This book makes for interesting reading for those of us in the mainstream of social science and political science, but I suspect most will not come away convinced. The chapters by Elkin and Anderson, in particular, provide good overviews and arguments. In addition, most of the chapters contain arguments presented at length elsewhere, so the book provides a nice introduction to those scholars interested in the work of these authors and the development of the PEGS research agenda. Finally, the book is worth reading for the questions it raises and for the historical background it provides. But ultimately it is more successful at raising these questions than in answering them, or even demonstrating that our current state of knowledge allows for answers.